

JUDGE COTE

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

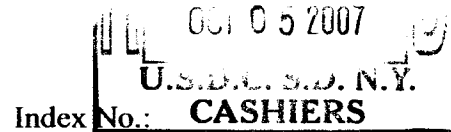
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RLI INSURANCE COMPANY,

Plaintiff,

- against -

ROADWAY EXPRESS INC.,

Defendant.
-----x



COMPLAINT

The Plaintiff, RLI INSURANCE COMPANY ("RLI") herein, by and through their attorneys, Hill Rivkins & Hayden LLP, complaining of the above-named Defendant, alleges upon information and belief as follows:

1. Jurisdiction is predicated upon 28 U.S.C. §1331, 28 U.S.C. §1332(a)(2) and 28 U.S.C. §1337 since the claim arises out of interstate transport of goods by motor carrier and/or rail carrier pursuant to the Carmack Amendment 49 U.S.C. §14706 or a rail carrier under 49 U.S.C. §11706, and since there is diversity of citizenship between the parties and the Plaintiff's damages exceed \$75,000.00.

2. At and during all the times hereinafter mentioned, Plaintiff RLI was and now is a stock company organized and existing under and by virtue of the laws of Illinois with an office and place of business c/o RLI Marine, 1384 Broadway, New York, New York 10018.

3. At and during all the times hereinafter mentioned, Plaintiff RLI insured the shipment hereinafter described in paragraph 5 hereof and indemnified the owner of the shipment for the loss it sustained, and by reason of that payment became subrogated to the rights of the owner of this shipment.

4. Upon information and believe, at and during all the times hereinafter mentioned, Defendant Roadway Express Inc. ("Roadway") was and now is a corporation and/or other business entity organized and existing under and by virtue of the laws of the United States with offices and places of business at 1313 Grand Street, Brooklyn, New York and P.O. Box 3577 Akron, Ohio.

5. On or about June 15, 2007 at Miami, Florida, there was delivered to Roadway a shipment of sportswear in good order and condition which Defendant Roadway accepted and for good and valuable consideration agreed to carry to Portland, Oregon under bill of lading 721-491911-3 and 721-491923-2.

**AS AND FOR A FIRST CAUSE
OF ACTION AGAINST ROADWAY**

6. Plaintiff repeats and realleges each and every allegation of Paragraphs 1 through 5 as if the same were fully set forth herein at length.

7. The shipment of sportswear was never delivered to the consignee.

8. By reason of the premises, the Defendant was negligent and careless in its handling of Plaintiff's cargo, violated its duties and obligations as a common carrier and bailee of the cargo and was otherwise at fault.

9. Plaintiff was the shipper, consignee or owner of said shipment and brings this action on its own behalf and, as agent and trustee, on behalf of and for the interest of all

parties who may be or become interested in the said shipment, as their respective interests may ultimately appear, and plaintiff is entitled to maintain this action.

10. Plaintiff has duly performed all duties and obligations on its part to be performed.

11. By reason of the premises, Plaintiff has sustained damages as nearly as same can now be estimated, no part of which has been paid, although duly demanded, in the total amount of \$99,471.00.

**AS AND FOR A SECOND CAUSE
OF ACTION AGAINST ROADWAY**

11. Plaintiff repeats and realleges each and every allegation of Paragraphs 1 through 11 as if the same were fully set forth herein at length.

12. After a derailment caused by Roadway or Roadway's agents, Roadway or its agent converted Plaintiff's cargo, by disposing of the cargo with no notification to Plaintiff.

13. By reason of the premises, Plaintiff has sustained damages as nearly as same can now be estimated, no part of which has been paid, although duly demanded, in the total amount of \$124,207.96.


WHEREFORE, Plaintiff respectfully requests that

1. Due process of law be issued against the Defendant;
2. Judgment be entered in favor of Plaintiff against Defendant in the amount of \$99,471.00 on the First Count and \$124,207.96 on the Second Count, together with interest, costs and attorneys fees.

3. Plaintiff has such other and further relief as may be just and proper under the circumstances.

Dated: New York, New York
October 5, 2007

HILL RIVKINS & HAYDEN LLP
Attorneys for Plaintiff

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